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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

STASSEN FOR PRESIDENT CITIZENS COMMITTEE,
Petitioner,

v.

FRANK M. JORDAN, SECRETARY OF THE STATE OF CALIFORNIA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

JOHN LORD O'BRIAN,
NEWTON W. ELLISON,
701 Union Trust Building,

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

Petitioner, Stassen for President Citizens Committee, prays that a writ of certiorari issue to review the judgment of the Supreme Court of California entered on April 17, 1964, in *In the Matter of the Application of the Stassen for President Citizens Committee, etc.*, v. *Jordan, Secretary of State, etc.* That judgment finally denied petitioner's original application under California Elections Code § 6403 for an order directing the respondent Secretary of State to take the appropriate steps to include upon the California Republican Presidential Primary ballot the names of delegates favorable to the candidacy of Harold E. Stassen.

OPINIONS BELOW

The Supreme Court of California did not issue any opinion in this case. A copy of its judgment, which is unreported, appears in Appendix A to this petition at page 1a.

JURISDICTION

The judgment of the Supreme Court of California was entered on April 17, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

QUESTION PRESENTED

California law permits the names of candidates for delegate to a national nominating convention to be placed on the presidential primary ballot if a prescribed percentage of the number of voters who supported the political party in question in the last state-wide election sign a petition requesting such action. Such a petition, containing almost twice the requisite number of names, has been filed on behalf of candidates for delegate favorable to the candidacy of Harold E. Stassen for the Republican presidential nomination. Nevertheless, the responsible state official has refused to certify the Stassen candidates' names for inclusion on the primary ballot. The Stassen candidates were disqualified on the basis of a comparison of the names on the petition with voting records containing the names of only a part of the qualified electorate. No comparison has been made with voting records containing the names of hundreds of thousands other qualified voters, principally persons who have only recently registered to vote. The question thus presented is:

Does action by state officials which precludes substantial numbers of duly registered voters

from participating in the nomination of delegates to the Presidential convention of their party through no fault of the voters but solely because of arbitrary election procedures constitute such an undue restraint on the right to vote in a Presidential election as to violate the Fourteenth Amendment?

STATUTES INVOLVED

This case involves numerous provisions of the California Elections Code, primarily §§ 6050, 6051, 6057, 6081, 6082, 6086, 6087, 6145-47, 6170, and 6403 thereof. Pertinent portions of the text of these sections appears in Appendix B hereto, at p. 2a.

STATEMENT

Preliminarily, petitioner respectfully requests the Court to note that time is of the essence in this case. The California presidential primary is scheduled for June 2. Petitioner is informed that the respondent Secretary of State has already certified for inclusion on the ballot the names of delegates favorable to Governor Rockefeller and Senator Goldwater. In a matter of days, by about May 1, the physical process of printing the ballots must begin. Accordingly, petitioner has filed, simultaneously with this petition, an application to Mr. Justice Douglas as Circuit Justice for temporary injunctive relief to preserve the *status quo* pending this Court's disposition of the petition. Petitioner has also filed a motion under Rule 43(4) to advance the hearing and disposition of this case sufficiently to enable it to be disposed of in time. In addition, petitioner is ready to meet any schedule for briefing and oral argument that the Court may wish to set. This petition may, if certiorari is granted and the Court wishes, be treated as petitioner's brief on the

merits. Telegraphic notice of all these steps has been given to counsel for respondent. It is submitted that this expedited procedure is authorized by another primary-election case, *Ray* v. *Blair*, 343 U.S. 901 (1952), in which certiorari was granted on March 24, 1952, the case argued on March 31, 1952, and a decision announced on April 3, 1952. See 343 U.S. 133, 214.

Since early this year members of the petitioner Stassen for President Citizens Committee have been actively engaged in fulfilling the requirements of state law to have delegates favorable to the candidacy of Harold E. Stassen for the Republican presidential nomination placed upon the primary ballot in the State of California. On March 4, 1964, petitioner filed with the respondent Secretary of State, in compliance with California Elections Code § 6051, a statement containing the name of the Committee and the names of its officers. This action was taken within the time allowed by law. Thereafter, on March 17, 1964, the Committee filed with the Secretary of State affidavits of 86 candidates for delegate to the Republican National Convention, each of whom expressed a preference for Governor Stassen as Republican presidential nominee. These documents were filed in full compliance with § 6357 of the California Elections Code.

On the next day, March 18, 1964, the petitioner Committee promptly proceeded to circulate nominating petitions in order to have its delegate candidates placed on the ballot. Within a period of about two weeks, the petitioner Committee succeeded in obtaining over 22,000 signatures, a number well in excess of the minimum of 13,702 required by state law. The papers containing these signatures were filed with various County Clerks throughout the state. Each such paper

was accompanied by an affidavit of a duly appointed Verification Deputy, pursuant to the requirements of California Elections Code § 6086. Further, each person who signed these nominating petitions also signed a statement that he was a registered Republican voter, that he had not signed nominating papers for any other presidential candidate, and that he intended to support the candidacy of Governor Stassen.

California Elections Code § 6145 lays out the next step in the nominating process. It requires that the County Clerks with whom the several nominating petitions are filed examine these petitions and compare them with affidavits of registration submitted by voters to their respective County Registrars. Under § 6087 of the Elections Code, moreover, a verified nomination petition must be presumed to be valid unless proved invalid by comparison of the signatures thereon "with the affidavits of registration in the office of the County Clerk." The various County Clerks purported to make the examination of nomination petitions required by § 6145. In fact, as documents filed in the Court below make clear (*e.g.*, Ex. B to the affidavit of Lee M. Spangler, R. 110), it is undisputed that a number of the Clerks did not make anything like a complete examination of all the voter-registration affidavits in their offices. They examined only those affidavits that had been filed with them sufficiently in advance to have been indexed.[1] This incomplete examination failed to take into account hundreds of thousands of registration affidavits that had been duly executed by qualified voters and that were present in the offices of the various

[1] Indexing is a clerical procedure designed for the convenience of the County Clerks. It is not essential to the validity of voter registration. Registration is fully effective upon submission of the required affidavit to a County Clerk or his deputy.

County Clerks.[2] Thus, a large number of persons who had properly executed registration affidavits were ignored in the County Clerks' examination of the Stassen nominating petitions. In the counties of San Diego, San Francisco, Los Angeles, Humboldt, San Joaquin, and Alameda alone, over 9,000 signatures were marked "not sufficient" on the basis of this improper examination. See Affidavit of Lee M. Spangler, vice-chairman of petitioner, ¶ 10, R. 6.

On the basis of this incomplete comparison of the nominating petitions, the County Clerks certified as valid to the respondent Secretary of State only 9,207 Stassen signatures. Notwithstanding an application by petitioner pointing out that under California Elections Code § 6087 all signatures not compared with a full list of registered voters are prima facie valid, and that recently registered voters—many of whom are underprivileged and members of minority groups—were being effectively deprived of a voice in the nominating process, the respondent refused to go behind the County Clerks' certificates and ignored the Clerks' failure to make a complete check of the nominating petitions against the voter-registration records in their offices. On April 14, respondent announced his intention, under § 6170, to transmit to the County Clerks for inclusion on the primary ballot only the names of the Goldwater and Rockefeller delegate candidates.

Petitioner immediately, on April 15, commenced this original proceeding in the Supreme Court of California to require the respondent Secretary of State to certify in addition the names of the 86 delegate candidates favorable to Governor Stassen. Such an original

[2] See R. 13.

application in election matters is expressly authorized by Elections Code § 6403. Petitioner contended, in the affidavit filed by Lee M. Spangler, its vice-chairman,[3] that the Stassen delegates were entitled to the benefit of the statutory presumption contained in § 6087. It was also urged, in ¶ 11 of the Spangler affidavit, at R. 7-8 that the Secretary of State's action was based on an arbitrary certification procedure, and that members of the California electorate had been thereby denied the equal protection of the laws and deprived, without due process of law, of their right to participate effectively in the presidential nominating process.[4]

On April 16 respondent filed a memorandum opposing petitioner's request for relief on its merits. On April 17 the Supreme Court of California entered judgment finally denying the application under § 6403, thus rejecting both petitioner's state-law and Fourteenth Amendment contentions.

REASONS FOR GRANTING THE WRIT

This case concerns the right of citizens to participate effectively in the choice of their President. The issues it raises are central to free government. The California Election Code has been construed to deny to admittedly qualified voters the right to participate in the nomination of a presidential candidate, on the sole and patently irrational ground that their voter-registration affidavits—though valid in all respects—have

[3] Proceedings under § 6403 are commenced by affidavit, rather than by petition or complaint.

[4] The same contention was presented in Petitioner's Memorandum of Points and Authorities in the Court Below (R. 49-50).

not yet been formerly indexed by the various County Registars. Accordingly, important questions of federal constitutional law are presented which have not been, but should be, resolved by this Court.

The right to vote, which has been arbitrarily restrained here, is the indispensable condition of all other rights guaranteed by the Constitution. This Court has often so stated, most recently in *Wesberry* v. *Sanders*, 376 U. S. 1, 17 (1964): "Other rights, even the most basic, are illusory if the right to vote is undermined." *Accord*, *Gray* v. *Sanders*, 372 U. S. 368, 375 n.7 (1963): "'A right that a man has to give his vote . . . is a most transcendent thing, and of a high nature . . . .'" (quoting Holt, L.C.J., in *Ashby* v. *White*, 2 Ld. Raym. 938, 953 (K.B. 1702)). The right to vote, moreover, includes the right not only to cast a ballot, but to have one's ballot counted, and to have it counted just as much as any other citizen's. See *Wesberry* v. *Sanders*, *supra*, 376 U. S. at 17; *Gray* v. *Sanders*, *supra*, 372 U. S. at 379-80; *United States* v. *Classic*, 313 U. S. 299 (1941). The right extends to all phases of the political process, including participation in primary elections and nominating conventions. See *Terry* v. *Adams*, 345 U. S. 461 (1953); *Smith* v. *Allwright*, 321 U. S. 649 (1944); *United States* v. *Classic*, 313 U. S. 299, 330 (1941) (Douglas, J., dissenting in part).

If there is any office for which the vote is more important than for any other, it is surely the Presidency of the United States. This Court has held that the right to vote for all federal officials is "among the rights and privileges of National citizenship recognized by this court . . . ." *Ewining* v. *New Jersey*, 211 U. S. 78, 97 (1908). But of the Presidency it has said:

> "The President is vested with the executive power of the nation. The importance of his election and the vital character of its relationship to and effect upon the welfare and safety of the whole people cannot be too strongly stated." *Burroughs* v. *United States*, 290 U. S. 534, 545 (1934).

Popular participation in the selection of the President is particularly to be fostered. For it is he who more than any other official derives his powers from the people as a whole, and he alone (together with the Vice President) is elected by all the people of this nation.

The right to participate in the political process is surely too precious to be subordinated to claims of administrative convenience. Like the right to free speech and press and the right to petition for redress of grievances, it is of central importance. It follows that state statutes affecting the exercise of federal political rights are not to receive an easy presumption of constitutionality, as do regulations of business, for example, or purely economic or social rules. As this Court implied in *United States* v. *Carolene Prods. Co.*, 304 U. S. 144, 152-53 n.4 (1938), legislation which restricts "political processes . . . is to be subjected to more exacting judicial scrutiny under the Fourteenth Amendment than are most other types of legislation." This principle has been summarized only this Term in *Wesberry* v. *Sanders*, *supra*, 376 U. S. at 17-18:

> "Other rights, even the most basic, are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that *unnecessarily* abridges this right." [Emphasis supplied.]

In short, a state-created classification that abridges the right to vote in a federal election cannot be upheld on

a mere showing of convenience. The Constitution requires a higher standard. Such a classification must be the expression of a strong and compelling State interest; it must, as indicated in *Wesberry, supra*, be not only reasonable but *necessary*.

The California system, as construed and applied by the Supreme Court of that state, fails to measure up to this high standard. The presidential primary is a particularly important phase of the choice of a President. For the choice in the general election in November will, as a practical matter, be limited to the nominees of the two major parties. Those nominees, in turn, will be chosen not by the members of their parties at large, but by delegates in convention. The only chance the people have to work their will is in the primaries. In California, moreover, the choice in the primary will be limited to those names of delegates on the ballot. Write-ins are not permitted. Nor is there any preferential primary, in which the people may vote directly for their favorite presidential candidate. In terms of the situation presented by this case, the judgment of the Court below effectively limits the choice of California Republicans to the two certified candidates. That no one has yet been deprived of the right to vote in the June 2 primary is immaterial; the right to enter a candidate in that primary—to give the people of California as many options as possible—may in practice be even more important than actually casting a ballot on June 2.

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[5] Petitioner does not claim that California was constitutionally obligated to hold a primary for convention delegates. But having chosen to do so, the State may not deny to any qualified citizen the right to participate fully in all phases of the primary. *Cf.* Griffin v. Illinois, 351 U. S. 12 (1956) (State need not provide a criminal appeal; but if it does so, appeal must be open to the poor as well as to the rich).

Many thousands of persons are duly qualified and registered voters in California but have not yet had their names formally indexed. These persons, who are either recently registered voters or persons who have recently changed their political affiliation,[6] have been denied the right to seek to have the names of Stassen delegates placed on the ballot. Only persons who have been registered Republicans long enough to have been formally recorded and indexed have that right in California. Only a compelling justification on the part of the State could uphold such a discrimination.[7] It is no answer to say that petitioner has not pointed to any particular individual who has signed a Stassen petition and also executed an unindexed voter-registration affidavit.[8] Such a contention misses the point. For petitioner does not contend that upon the filing of its petition containing over 22,000 names its slate was *ipso facto* entitled to certification. It claims only that its names should be checked against the names of *all* registered Republicans in California, not merely against those of some such persons. Anything less fails to accord its due to the entire electorate. The legislature, in enacting the statutory presumption of validity in § 6087, obviously recognized this problem. The Court below evidently construed away that enactment—on

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[6] It goes without saying that the right to change one's mind is an integral part of the right to participate in politics.

[7] We do not understand the State's position in the Court below as including a claim of physical impossibility of indexing the new registrants. At most, the contention was one of mere clerical convenience. *Cf.* Weil v. Calhoun, 25 Fed. 865, 871 (C.C.N.D. Ga. 1885).

[8] In any case, it would have been practically, if not legally, impossible for petitioner or any member of the general public to examine the unindexed affidavits.

grounds impossible to surmise—and thereby confronted petitioner with a situation as unexpected and inequitable as a retroactive legislative change in the presidential-primary rules. If the legislature had enacted in clear and definite terms a specific cut-off date, beyond which time persons newly registered would not be permitted to sign nominating petitions, a different case might be presented. Here, however, the State system acts in a wholly capricious manner. A person newly registered may have the good luck to be promptly indexed, or he may not. His political rights are left solely to chance. As a result, the court's decision leaves Presidential candidates and their supporters at hazard. The Court below thus acted in a manner wholly at odds with effective political participation."

Sixty years ago this Court upheld a Maryland statute providing that no one coming into the State from outside should be able to vote until one year after he had filed a declaration of intention to become a Maryland citizen. *Pope* v. *Williams*, 193 U. S. 621 (1904). It seems at least questionable whether the decision comports with modern standards. But however that may be, the Court's limitations on its decision are of direct interest here. It was careful to note that the Maryland law was not being applied retroactively. 193 U. S. at 632. And it pointedly observed what the case then before it did *not* involve:

> "In this case no question arises as to the right to vote for electors of President and Vice-President, and no decision is made thereon." *Id.* at 633.

The case at bar is closely analogous to the case thus laid to one side. The issues are plainly of great public and constitutional importance. It is submitted that the case is worthy of this Court's attention.

CONCLUSION

Wherefore, petitioner prays that a writ of certiorari issue from this honorable Court to review the judgment of the Supreme Court of California in *In the Matter of the Application of the Stassen for President Citizens Committee, etc.* v. *Jordan, Secretary of State, etc.* In the event that the petition is granted, petitioner prays that the judgment of the Court below be reversed, that the cause be remanded, and that the Court below be directed to enter an order requiring the respondent Secretary of State to certify promptly for inclusion on the June 2 primary election ballot the delegate candidates favorable to Harold E. Stassen, unless it shall first have been determined, by a complete comparison with all duly executed registration affidavits, that less than 13,702 qualified electors have signed the Stassen nominating papers.

Respectfully submitted,

JOHN LORD O'BRIAN,
NEWELL W. ELLISON,
701 Union Trust Building
Washington 5, D. C.,
Attorneys for Petitioner.

COVINGTON & BURLING,
701 Union Trust Building,
Washington 5, D. C.,
Of Counsel.

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